

Developing the First Official Draft of Hydraulic Fracturing Regulations

- Work to create the first official draft of regulations has begun, a process that is expected to take several weeks. In addition to the draft regulations, the Department will prepare a rulemaking package that includes a Notice of Proposed Action (NOPA), an Initial Statement of Reasons (ISOR), and a specified fiscal worksheet reflecting the findings of an economic impact analysis; all of these items are required by the Administrative Procedure Act (APA).
 - The NOPA explains, in plain English, how proposed changes – whether new, amended, or deleted language – will affect existing regulations. The NOPA will inform the public about any public hearing(s) to be conducted as part of the rulemaking process. It will also include an Informative Digest that will define the parameters of the rulemaking.
 - The ISOR establishes the specific purpose of the regulations; the necessity of the regulations; alternatives to the proposed regulatory action; and other information.
 - The fiscal worksheet, which is reviewed and approved by the Department of Finance, includes statewide costs that small businesses, individuals, and State agencies may incur over the lifetime of the regulation; alternatives to the proposed regulation; the estimated benefit or cost the alternative may have, as compared to the proposed regulation; the estimated number of jobs created and/or eliminated due to the proposed regulation; an explanation regarding how the proposed regulation will or will not affect the ability of California businesses to compete with other states; and estimated initial and ongoing costs to business and individuals. Again, all of these documents and analyses are required by state law.
- Once the draft regulations and the rulemaking package are complete, the Department will submit the package to the Office of Administrative Law (OAL) for review to ensure that it meets the requirements of the APA. If OAL approves the rulemaking package, it will publish the NOPA in the California Notice Register. At that time, the draft regulations and supporting material will be available on the Department and Division Web sites and the 45-day public comment period begins.

- Written public comments may be submitted at any time during the public comment period. In addition to written comments, the Department and Division will hold at least one public hearing for the purpose of providing the public with an opportunity to speak or submit written comment.
- The Department must provide written responses to all oral and written comments received during the public review period in the Final Statement of Reasons (FSOR).
- Once the Department considers the public comments, what follows depends upon the extent of change to the draft regulations.
 - If there are no or insubstantial changes, the draft regulations, along with the FSOR and other documentation, are sent to the OAL, which has 30 working days to accept or reject the regulations.
 - If there are substantial changes to the draft regulations, the Department will identify those changes and mail a “Notice of Proposed Changes” to interested parties, kicking off a 15-day comment period.
 - If there are major changes – that is, the Department must expand the initial scope of the draft regulations – a new 45-day comment period must be held, and the public comment process described earlier is repeated.

The publication of the NOPA in the California Notice Register starts a one-year clock to complete the entire process. If regulations are not adopted within a year, the process must begin anew. The regulations would go into effect at the beginning of the next quarter following approval of the complete regulatory package by OAL.

For a comprehensive look at the OAL requirements, visit:
oal.ca.gov